IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P.NO.1375 OF 2004

Baburao Vithal Gurav ..Petitioner

Vs.

Basavraj Chandrasha Birajdar
and Ors. ..Respondents

...

Mr.V.V.Purwant Advocate for Petitioner
Mr.Suresh S.Shah Advocate for Respondent Nos.1 & 2
Mr.V.B.Konde-Deshmukh A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : MARCH 29,2006

P.C.

1. Heard the learned advocate for the petitioner-original complainant, learned advocate for the Respondent Nos.1 and 2 and the learned A.P.P. for the State.

2. The petitioner is the complainant in Sessions Case No. 148 of 2002. The trial of the said case is going on before the learned Ad-hoc Assistant Sessions Judge, Solapur. The said case pertains to C.R.No. 45 of 1992 of Akkalkot South Police

Station.

3. Incident in the said case has occurred on 5.10.1992. The petitioner Baburao Gurav who is the complainant in the said case, was examined as P.W.1 in Sessions Case No.148 of 2002. During his evidence, the petitioner has stated that Basavraj Birajdar and Sushail Birajdar i.e. the respondent nos.1 and 2 respectively beat him by means of stones. On the basis of his evidence before the Court, an application came to be preferred under Section 319 of Cr.P.C. by the prosecution to proceed and try Respondent Nos.1 and 2 as accused in the said Sessions Case. The learned Ad-hoc Assistant Sessions Judge rejected the said application by order dated 17.1.2003. The said order was challenged by filing revision before the learned Additional Sessions Judge Solapur. By order dated 24.3.2004, the learned Additional Sessions Judge dismissed the revision application. Being aggrieved thereby this Writ Petition has been preferred.

4. I have perused both the orders passed by the learned Ad-hoc Assistant Sessions Judge and learned

Additional Sessions Judge, Solapur. In my opinion, both the orders are just, legal and correct.

5. As stated earlier, the incident in the said case took place on 5.10.1992. The said case is under Section 326 of IPC. The complainant i.e. the present petitioner has stated in his F.I.R. the names of seven persons i.e. original accused nos.1 to 7. He has not mentioned the presence of present Respondent Nos.1 and 2. Respondent Nos.1 and 2 and the petitioner are from the same village. It is not the case of the petitioner that he did not know the names of Respondent Nos.1 and 2. As stated earlier, they are residents of same village. Not only that, there appears to be strained relations between the complainant and Respondent Nos.1 and 2 on account of dispute in respect of landed property. If Respondent Nos.1 and 2 had really assaulted the complainant or had taken part in the incident in any manner, the petitioner-complainant would not have forgotten to mention their names in the F.I.R. However, the F.I.R. is totally silent as far as the names of Respondent Nos.1 and 2 are concerned. Moreover, though the statements of various witnesses have

been recorded, none of the statements disclosed the names of Respondent Nos.1 and 2. There is no whisper or mention of the names of Respondent Nos.1 and 2 by any witness whose statements have been recorded in the course of investigation.

6. Reliance is placed on some applications which have been made to the police. The application dated 9.10.1992 does not name the Respondent Nos.1 and 2 specifically as assailants. As far as other application dated 24.10.1992 is concerned, one copy of the said application is addressed to the Superintendent of Police, Solapur and the other is addressed to the P.S.I. South Akkalkot Police Station. There is nothing on record to show that these applications were really presented before the concerned authorities as they do not bear any endorsement to that effect.

7. As observed earlier, during the investigation, no material was found by the Investigating Officer against Respondent Nos.1 and 2. All these facts and circumstances have been considered by both the Courts below. Moreover, charge was framed on 1.10.2001 against the original accused Nos.1 to 7.

At that time, complainant was present. However, complainant did not raise any grievance nor did he request the Court to add the names of Respondent Nos.1 and 2. In this view of the matter, I find that both the orders are just, legal and proper. No interference is called for.

8. Writ petition is disposed of.

[V.K.TAHILRAMANI,J.]